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No. 94-247

IN THE

Supreme Court of the United States

October Term, 1994

RALPH SCOPO, JR.,

Petitioner,

against

UNITED STATES OF AMERICA,

Respondent.

SUPPLEMENTAL BRIEF FOR PETITIONER

STEVEN R. KARTAGENER
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12 pp

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In the

SUPREME COURT OF THE UNITED STATES

October Term, 1994

RALPH SCOPO, JR.,

Petitioner,

-against-

UNITED STATES OF AMERICA,

Respondent.

SUPPLEMENTAL PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

The petitioner respectfully prays for a writ of certiorari to review the judgment of the Court of Appeals for the

Second Circuit entered in the above-referenced case on March 21, 1994, which reversed the judgment of the United States District Court for the Eastern District of New York (Glasser, J.), entered on February 23, 1993, which granted a suppression order.

A petition for a writ or certiorari was timely filed in August, 1994. The Solictor General filed a memorandum in opposition, arguing that the matter was not ripe for review because petitioner might be tried and acquitted, rendering the matter moot.

THE REASONS FOR GRANTING THE WRIT

Contrary to the Solicitor General's argument, this case is as ripe for review

as it will ever be. On May 19, 1994, pursuant to an agreement entered into between petitioner and the Government, petitioner entered a conditional plea of guilty (Fed. R. Crim. Proc. 11[a][2]) to the crime charged in the indictment. He was sentenced to nine months' imprisonment on September 22, 1994. The conditional plea agreement is specifically premised upon the understanding that petitioner should be allowed to seek certiorari with respect to the Fourth Amendment suppression issue that has already been fully litigated before the United States Court of Appeals for the Second Circuit. See Supplemental Appendix, pp. 1-2, paras. 3, 5. This is confirmed in the minutes of

the guilty plea. See Supplemental Appendix, p. 3-4.

To require petitioner to relitigate the precise issue that he has already litigated before the Second Circuit, in order to obtain precisely the same decision, would be nothing more than a waste of judicial resources. We respectfully submit that for the reasons stated in our original petition, this is a case worthy of a grant of certiorari. The Court has jurisdiction and, we respectfully submit, it should exercise it at this point in the proceedings herein.

CONCLUSION

FOR THE REASONS STATED HEREIN, THE PETITION FOR A WRIT OF CERTIORARI SHOULD BE GRANTED.

Dated: New York, New York
September 27, 1994

Respectfully submitted,

STEVEN R. KARTAGENER, ESQ.
Counsel of Record

Attorney for Petitioner
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Of Counsel

SUPPLEMENTAL APPENDIX

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SUPPLEMENTAL APPENDIX

EXCERPT OF
PLEA AGREEMENT
92 CR 184 (ILG)

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

- against -

RALPH SCOPO, JR.,

Defendant.

Pursuant to Rule 11 of the Federal Rules of Criminal Procedure, the United States Attorney's Office for the Eastern District of New York (the "Office") and RALPH SCOPO, JR. ("the defendant") agree to the following:

1. The defendant will plead guilty to the Indictment herein, charging a violation of 18 U.S.C. § 922(K).

* * *

3. Pursuant to Rule 11(a)(2) the defendant may enter a conditional plea of guilty, with the defendant reserving the right to seek review in the Supreme Court of the United States of the Second Circuit's decision in *United States v. Scopo* regarding his pretrial motion to suppress evidence.

* * *

5. Based on the information now known to the Office, the Office agrees that, on condition that the defendant seeks prompt review of the Second Circuit's decision in *United States v. Scopo* in the Supreme Court of the United States, and timely files all appellate papers without seeking any extensions whatsoever of the applicable deadlines, the defendant will surrender to the custody of the Attorney General in this action one week

from the date that the Supreme Court either (a) declines to review the defendant's claim or (b) rules adversely on the defendant's claim, whichever is sooner. It is understood by the defendant that, notwithstanding the above, if he does not timely file his appellate papers in the Supreme Court, he will surrender to the custody of the Attorney General immediately. It is further understood by the defendant that, notwithstanding the above, if he violates any condition of his pretrial release, the Office may move for his remand. It is also understood that this paragraph is not binding on the Court.

* * *

Dated: Brooklyn, New York
May 18, 1994

Respectfully submitted,

ZACHARY W. CARTER
United States Attorney
Eastern District of New York

By: /s/ Andrew Weissmann
ANDREW WEISSMANN
Assistant U. S. Attorney

Agreed and consented to:

/s/ Ralph Scopo
RALPH SCOPO, JR.
Defendant

Approved by:

/S/ Steven R. Kartagener
Counsel to Defendant

Approved by:

/s/ Kirby Heller
KIRBY HELLER
Acting Deputy Chief
Criminal Division

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

CR-92-184

United States Courthouse
Brooklyn, New York

May 19, 1994
2:30 o'clock p.m.

UNITED STATES OF AMERICA,
Plaintiff,

- against -

RALPH SCOPO, JR.,
Defendant.

EXCERPT OF
TRANSCRIPT OF PLEADING
BEFORE THE HONORABLE I. LEO GLASSER
UNITED STATES DISTRICT JUDGE

APPEARANCES:

For the Government: ZACHARY W. CARTER
United States Attorney
By: Andrew Weissmann
Assistant United States Attorney
225 Cadman Plaza East
Brooklyn, New York

For the Defendant: JAMES J. DIPIETRO, Esq.
STEVEN R. KARTAGENER, Esq.

* * *

Mr. DiPietro [Defense Counsel]: If Your Honor please, the only thing I'd like to raise to the Court at this time, pursuant to paragraph three of our plea agreement, the government has consented subject to Your Honor's approval, which I would ask you to agree to on the record if you were so inclined, to have a

conditional plea in this particular matter pursuant to Rule 11(a)(2) so that we could seek certiorari to the Supreme Court of the United States.

THE COURT: Mr. Weissmann?

MR. WEISSMANN [The Assistant United States Attorney]: We have consented to that in writing in the plea agreement.

THE COURT: Just so the record is perfectly clear, the conditional aspect of the plea relates to the validity of the search and seizure only. The issue is I think squarely posed by my determination and considered by the Court of Appeals. The only issue is whether a search which is predicated upon a pretext does or does not run afoul of the Fourth Amendment of the United States Constitution. That's the only issue which is being preserved by way of a conditional plea.

MR. WEISSMANN: That is correct, Judge.

* * *